

BADIAK & WILL, LLP
Attorneys for Plaintiff
106 Third Street
Mineola, New York 11501-4404
(516) 877-2225
Our Ref.: 07-J-011-AW

Office
Copy

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
LIBERTY MUTUAL GROUP INC.,
as subrogee of BODGER SEEDS, LTD.,

08 CV 00223 (JSR)

COMPLAINT

Plaintiff,

-against-

MEDITERRANEAN SHIPPING COMPANY S.A.,

Defendant.
-----X

Plaintiff LIBERTY MUTUAL GROUP INC., as subrogee of BODGER SEEDS, LTD., complaining of the defendant, MEDITERRANEAN SHIPPING COMPANY S.A., by its attorneys BADIAK & WILL, LLP, sets forth and alleges to this Court upon information and belief, as follows:

1. This is an admiralty action within the meaning of section 9 (h) of the Federal Rules of Civil Procedure.
2. At and during all material times hereinafter referred to, plaintiff LIBERTY MUTUAL GROUP INC. ("Liberty Mutual") was and still is a business corporation duly organized and existing under and by virtue of the laws of Massachusetts, with an office and place of business located at 175 Berkeley Street, Boston, Massachusetts, 021174.

3. At and during all material times hereinafter referred to, defendant MEDITERRANEAN SHIPPING COMPANY S.A. ("MSC") was and still is a corporation duly organized and existing under and by virtue of the laws of a foreign state, with an office and place of business located c/o Mediterranean Shipping Company (USA) Inc., 420 Fifth Avenue, New York, New York, 10018-2702, and was engaged as a common carrier by water for hire and owned, chartered, managed and/or otherwise controlled or contracted to use the merchant vessels ROYAL ZANZIBAR and MSC ILONA, as vessels engaged in the common carriage of merchandise by water for hire between, among others, the ports of Tanga, Tanzania and Long Beach, California.

4. Liberty Mutual, through its division Liberty International Underwriters, was the insurer of a cargo of flower seeds under policy number NYOMC01182001, damage and loss to which is the underlying origin of this action. Liberty Mutual was obligated under its policies of insurance to pay, and did pay its assured, for damage and loss sustained by said cargo while in transit, and would be or otherwise become subrogated to the rights of its assured, against third-parties, including the defendant, for the damage and loss sustained, and it is entitled to maintain this action, and brings this action on its own behalf and on behalf of all parties who may be so entitled.

5. On or about January 26, 2007, there was shipped by Maua Arusha, Ltd., in Arusha, Tanzania, as shipper, and delivered to MSC and the ROYAL ZANZIBAR, at Tanga, Tanzania, one 20-foot container designated MSCU1550902, containing six hundred forty-eight (648) bags of flower seeds, then being in good order and condition, and defendant then and there accepted the said shipment so shipped and delivered to them and, in consideration of certain freight charges thereupon paid or agreed to be paid, agreed to transport and carry

the said shipment to Long Beach, California, and there deliver the same in like good order and condition as when shipped, delivered to and received by them, to Environmental Seed Producers, the consignee, all in accordance with a bill of lading issued by or on behalf of the aforementioned vessel and defendant MSC, number MSCUTA011430, dated 1/26/07 (attached as **Exhibit 1**).

6. Prior to its arrival at Long Beach, and while still in the care, custody and control of MSC, the shipment was transloaded on board the MSC ILONA, in accordance with a bill of lading issued by or on behalf of the aforementioned vessel and defendant MSC, number MSCUTA011091 (attached as **Exhibit 2**).

7. Thereafter, defendant made delivery of the aforementioned shipment at Long Beach on or about April 4, 2007, but not in like good order and condition as when shipped, delivered to and received by them, but, to the contrary, with damage, loss and impaired value thereto, all in violation of defendant's obligations and duties as a common carrier of merchandise by water for hire.

8. No acts or negligence on the part of the plaintiff's insured contributed to the damage and loss herein described.

9. All conditions precedent required of the plaintiff and its predecessors-in-interest in said shipment have been performed.

10. By reason of the foregoing premises, plaintiff has sustained damages in the amount of \$69,825.75, no part of which has been paid although duly demanded of defendant.

WHEREFORE, plaintiff prays:

1. That due process of law may issue against defendant according to the practice of this Court;

2. That if defendant cannot be found within this District, then all of its property within this District be attached in the sum of \$69,825.75, with interest thereon and costs;

3. That judgment may be entered in favor of plaintiff and against defendant for the amount of \$69,825.75, together with pre-judgment interest, costs and such other relief as the Court deems equitable, just and proper.

Dated: Mineola, New York
January 2, 2008

Respectfully submitted,

BADIAK & WILL, LLP
Attorneys for Plaintiff
106 Third Street
Mineola, New York 11501
(516) 877-2225
07-J-011-AW

By:


ALFRED J. WILL (AJW-2485)

EXHIBIT 1

m SC				MEDITERRANEAN SHIP. NG COMPANY S.A., Geneva		ORIGINAL BILL OF LADING MSCUTA011430	
IS IT PORT-TO-PORT SHIPMENT? (Fill-In Boxes 7 & 8) Tick ->		COMBINED TRANSPORT SHIPMENT? (Fill-In Boxes 5, 6, 9 & 10) Tick ->		N° of original Bol (number & words)		N° of Bol Rider Pages (number & words)	
				3/THREE		NIL	
(1) SHIPPER: (Full details) MAUA ARUSHA LTD P.O. BOX 15002 TEL: (00 255) (0) 754 273569 ARUSHA, TANZANIA				(2) CONSIGNEE: (Not Negotiable unless «To Order of...») ENVEROMENTAR SEEDS PRODUCERS W. OLIVE AVE LOMPOC CA US 1351 93436 C/O BODGER SEEDS LTD M TYLER 91733 3618 USA 151 93436, 1800;			
(3) NOTIFY: (No responsibility shall attach to Carrier or to his Agent for failure to notify) EXPEDITOR INTERNATIONAL KEN SAUE W. CENTURY BLVD 6TH FLOOR LOS ANGELES CA U.S.A 5200 , 90045				(4) SPACE FOR CARRIER'S AGENTS ENDORSEMENTS (FCL/FCL, SLSC) FCL/FCL LINER IN FREE OUT			
(5) PRE-CARRIED BY: (Combined Transport only) XXXXXXXXXXXXXXXXXXXX		(6) PLACE OF RECEIPT: (Combined Transport only) XXXXXXXXXXXXXXXXXXXX					
(7) PORT OF LOADING: TANGA		(8) PORT OF DISCHARGE: LONG BEACH					
(9) PLACE OF DELIVERY: (Comb. Trans. only) XXXXXXXXXXXXXXXXXXXX		(10) MODE OF ON-CARRIAGE: (Comb. Trans. only) XXXXXXXXXXXXXXXXXXXX					
(11) VESSEL & VOY. N° ROYAL ZANZIBAR 56R		(12) AGENTS AT PORT OF DISCHARGE / DELIVERY:					
(14) CARRIER'S RECEIPT (Continued on attached Bill of Lading Rider page(s), if applicable)				(13) All details shown in Box 13 are furnished by the Shipper, being their Memoranda, Quantity, Condition, Contents and all other information shown in Box 13 are unknown to the Carrier, who has no means to verify their correctness and does not acknowledge them. The statements of the Shipper, in Box 13, do not engage the Carrier contractually or in any other manner.			
Identity Marks of Cont. or other packages and seal number(s)	Corresp. number of cont. or other package	Total nbr. of ctns or other packages received by the carrier	Haz. Code	Cargo Description (Continued on attached Bill of Lading Rider page(s), if applicable)	Cargo Gross weight	Measurement	
MSCU1550902/ 20'DV/ TARE Seal: 1760518/ Carriers seal	2200 KG	1		1x 20' CNTR(S) S.T.C. 648 BAGS OF FLOWER SEEDS 648 BAGS	15969.000 KG		
TOTAL TARE: 2200.00 KG				TOTALS:		15969.000 KG	
(15) FREIGHT & CHARGES («PAYABLE» signifies INTENTION: Cargo shall not be delivered unless Freight & Charges are paid)							
Specification of Freight & Charges:				Base	Rate	POL	PAYABLE at POD
FREIGHT PAYABLE * AT DESTINATION *							ELSEWHERE
Ad Valorem charges				TOTAL FREIGHT & CHARGES			
Declared value:							
PLACE AND DATE OF ISSUE TANGA 25 JAN 2007				SHIPPED ON BOARD DATE 26 JAN 2007		SIGNED ON BEHALF OF THE MASTER MSC AGENT SHATRADA-TANGA	

EXHIBIT 2



MEDITERRANEAN SHIPPING COMPANY (USA) Inc.

MEDITERRANEAN SHIPPING COMPANY (USA) INC.
10060 NORTHWEST FREEWAY, SUITE 300
Houston, Texas 77092

Phone: 713 681 8880

AS AGENTS FOR: MEDITERRANEAN SHIPPING CO.

ARRIVAL NOTICE

VESSEL NAME		VOYAGE NO.		ESTIMATED ARRIVAL DATE	
A	MSC ILONA		0710A		4/4/2007
B	MSC ILONA		0710A		4/4/2007
FLAG/REGISTRY		BILL OF LADING NO.		PRINT DATE	
A	Germany		MSCUTAO11091		3/28/2007
B	Germany		MSCUTAO11091		3/28/2007

In the case of a transshipment:

- the second line vessel (b) is U.S. final discharge

- the BL Number for Customs Entry is

ORIGIN LOCATION	PORT OF LOADING	PORT OF DISCHARGE	FINAL DESTINATION	No. Cont.	No. Pkgs.	WEIGHT (Kgs.)	MEASURE (Cbm)
	Tanga	Long Beach		1	648	15,969	0
CARGO DESCRIPTION							
648 BAGS OF FLOWER SEEDS							
CONTAINER NUMBER							
MSCU1550902-20DV							
CARGO PICK UP LOCATION							
Long Beach Pier "A" Terminal SSA Terminal Firms Code: Z978 Port Code: 2709 Pier A Berth 90-94 Availability#562-436-4489 Long Beach CA Cargo moving to the beyond Long Beach will be railed to the dest. under I.T. unless otherwise instructed. Pls contact the offices for further info. I.T. cancellation must be e-mailed							
SHIPPER				CONSIGNEE			
MAVIA ARUSHA LTD P.O. BOX 15002, Arusha,				ENVEROMENTAR SEEDS PRODUCERS W/ OLIVE AVE LOMPOC CA US 1851 93436			
NOTICE				EXPEDITOR INTERNATIONAL CENTURY BLVD 6TH FLOOR LOS ANGES 5200, 90045 Los Angeles, California 90189			
FREIGHT AND CHARGES						COLLECT	
Banker Adjustment Factor						220.00	USD
ISPS Import						6.00	USD
Ocean Freight						2,050.00	USD
Terminal Handling Charge						375.00	USD
TOTALS:						2631.00	USD

ALL COLLECT CHARGES AND ORIGINAL B/L MUST BE SURRENDERED PRIOR TO RELEASE OF CARGO. PERSONAL CHECKS ARE NOT ACCEPTED.

NOTE: Please contact Local Port Agent for instructions regarding the return of the empty equipment.